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**From:** Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]  
**Sent:** 5/10/2018 12:14:32 PM  
**To:** Walker, Mary [walker.mary@epa.gov]; Gettle, Jeaneanne [Gettle.Jeaneanne@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Able, Tony [Able.Tony@epa.gov]; Calli, Rosemary [Calli.Rosemary@epa.gov]; Parker, Christopher [Parker.Christopher@epa.gov]  
**CC:** Hicks, Matt [Hicks.Matthew@epa.gov]; Ghosh, Mita [Ghosh.Mita@epa.gov]; Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]  
**Subject:** RE: ESA and assumption Update for Dave Ross

I got an update from Simma on the meeting with David Ross. Three main points she wanted to share.

David seemed pleased with the proposed ESA approach that is outlined in the draft briefing document. Although we are not directly involved, he was concerned that the COE and DEP are not working on their MOA, at least the section unrelated to which waters are assumable. He is concerned that could hold things up and plans to discuss this. Not clear with whom.

Since we are beginning the exercise to revamp the Part 233 regulations governing assumption, he wants

Ex. 5 Deliberative Process (DP)

### Ex. 5 Deliberative Process (DP)

On that last note, this was published yesterday on the REGINFO.gov site regarding the process for updating the Part 233 regulations.

**Abstract:**

CWA section 404(g) provides for state and tribes to assume administration of the dredged and fill permitting program for certain waters, and addresses the requirements for implementation and EPA oversight. This rule is intended to provide general updates to the 1988 regulations and provide clarity on specific issue(s) requested by the states and tribes. Specifically, states and tribes requested that the EPA clarify which waters the state/tribe has CWA section 404 permit responsibilities, and which waters the USACE retains CWA 404 permit responsibility, under an approved state/tribal program. In 2015, EPA convened a Federal Advisory Committee (FACA), comprised of state, tribal and other stakeholder representatives charging them with providing recommendations on how EPA could provide clarity on this issue. This rule is intended to provide clarity on which waters are assumable after consideration of the FACA recommendations and provide needed technical corrections and updates to the 1988 regulations.

Phil

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**From:** Mancusi-Ungaro, Philip  
**Sent:** Wednesday, May 09, 2018 7:58 AM  
**To:** Walker, Mary <walker.mary@epa.gov>; Gettle, Jeaneanne <Gettle.Jeaneanne@epa.gov>; McGill, Thomas

<Mcgill.Thomas@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>; Parker, Christopher <Parker.Christopher@epa.gov>

**Cc:** Hicks, Matt <Hicks.Matthew@epa.gov>; Ghosh, Mita <Ghosh.Mita@epa.gov>; Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>

**Subject:** ESA and assumption Update for Dave Ross

Deliberative Process – Attorney Client Privileged- FOIA Exempt

Simma Kupchan (OGC) called me at the end of the day to tell me about the briefing that was planned for Dave Ross this morning at 9:30. OGC had just found out about it. I told her we were aware of it, and Kathy Hurlid had gone over the list of issues she planned to discuss in our 11:00 yesterday. We had provided her some input, but had not seen the briefing paper. Simma was waiting to get it, and asked if she could call me last night once she had a chance to review it and formulate questions. She was not sure if she was going to be in the meeting,

When she called, we went over a number of issues; ESA, the legislation, the rulemaking process, state Jurisdictional issues, assumable waters and the COE MOA, enforcement etc. She wanted a little more background in case she is asked questions. She did note that Dave apparently was surprised we were meeting with Florida to help them with this process.

Hopefully we will get a report after the meeting.

On the ESA issue, Simma indicated that the briefing paper has not been finalized, and she did not know if there were any conversations at Matt's level.

Phil

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